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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHARON BOBBITT, Individually and on Behalf)	
of All Others Similarly Situated,)	
)	
Plaintiff,)	CIVIL ACTION
)	NO. 04-12263-PBS
v.)	
)	Judge Saris
ANDREW J. FILIPOWSKI and)	
MICHAEL P. CULLINANE,)	
)	
Defendants.)	

MIKE TURNER, On Behalf of Himself and)	
All Others Similarly Situated,)	
)	
Plaintiff,)	CIVIL ACTION
)	NO. 04-12294-NMG
v.)	
)	Judge Gorton
ANDREW J. FILIPOWSKI, MICHAEL P.)	
CULLINANE, PAUL L. HUMENANSKY,)	
TOMMY BENNETT, JOHN COOPER,)	
JAMES E. COWIE, MICHAEL H. FORSTER,)	
ARTHUR W. HAHN, THOMAS J. MEREDITH,)	
J. KEVIN NATER and JOHN RAU,)	
)	
Defendants.)	

**MOTION TO TRANSFER RELATED *TURNER* CASE
TO JUDGE SARIS PURSUANT TO LOCAL RULE 40.1**

Defendants Andrew J. Filipowski and Michael P. Cullinane hereby request that the case of Turner v. Filipowski, et al., currently before Judge Nathaniel M. Gorton, be transferred, with Judge Saris' consent, to Judge Patti B. Saris, who is the judge presiding over a related and previously filed case, Bobbitt v. Filipowski, et al. The remaining defendants in the Turner case have, via their counsel, consented to this motion and the requested transfer. Defendants make

this motion pursuant to Local Rule 40.1 of the District of Massachusetts, and in support thereof, state as follows:

1. The Bobbitt case was initially filed in the United States District Court for the Northern District of Illinois (the “Northern District”) on May 27, 2003. The case was assigned to Judge Samuel Der-Yeghiayan of the Northern District. The complaint alleged violations of the securities laws by Messrs. Filipowski and Cullinane and other current/former directors/officers of Divine, Inc. (“Divine”) in connection with Divine’s securities filings and disclosures. Subsequently, eight other class actions making similar allegations were filed in the Northern District. On August 19, 2003, Judge Der-Yeghiayan consolidated all these cases with Bobbitt under the Bobbitt caption and case number (03 C 3599).

2. Subsequently, on October 29, 2003, Turner v. Filipowski, et al., which was originally filed in Illinois state court on September 30, 2003, and which also makes similar allegations, was removed to the Northern District (civil case number 03 C 7670). Turner was also assigned to Judge Der-Yeghiayan.

3. Thereafter, on October 7, 2004, in identical Orders, Judge Der-Yeghiayan ordered that both the Bobbitt and Turner cases be transferred to the District of Massachusetts. Pursuant to Judge Der-Yeghiayan’s Orders, the Northern District clerk transferred the Turner and Bobbitt files to the District of Massachusetts. Bobbitt was given the new case number 04-12263 and assigned to Judge Saris, and Turner was given the new case number 04-12294 and assigned to Judge Gorton.¹

¹ While it appears that, in this District, a docket entry was made in Turner three days before a docket entry was made in Bobbitt, that does not change the fact that, for purposes of LR 40.1’s transfer provisions, Bobbitt is the “previously filed” case. As noted above, Bobbitt was both filed *and* consolidated in federal court before Turner was filed in any court. (While Judge Der-Yeghiayan issued his Orders transferring both actions simultaneously, it appears that the Bobbitt file was misdirected to

4. Local Rule (“LR”) 40.1 of the District of Massachusetts states that the clerk shall assign “related cases” to the same judge. When a case is related to one “previously filed,” the second case should be assigned to the judge presiding over the previously filed case. LR 40.1(G)(1), (3). In the event the clerk erroneously assigns related cases to two different judges, the judges may jointly correct the error and “may then transfer the case pursuant to section (I) of this rule,” which in turn provides that “a judge may ... transfer the case to another judge, if the other judge consents to the transfer.” *See* LR 40.1(G)(3), (G)(5) and (I).

5. Under Local Rule 40.1, cases are “related” if:

some or all of the parties are the same and if one or more of the following similarities exist also: the cases involve the same or similar claims or defenses; or the cases involve the same property, transaction or event; or the cases involve insurance coverage for the same property, transaction or event; or the cases involve substantially the same questions of fact and law.

LR 40.1(G)(1). The defendants named in Bobbitt are Andrew J. Filipowski and Michael Cullinane. Messrs. Filipowski and Cullinane are also defendants in the Turner case. All defendants in both cases are former directors and/or officers of Divine. The plaintiffs in both cases purport to represent overlapping classes of the company’s shareholders. Plaintiffs in both cases allege that the defendants violated securities laws while they were directors and officers of Divine. Indeed, the factual allegations in the two cases are overlapping. The allegations in both cases focus on actions taken and disclosures made vis-à-vis Divine’s acquisition strategy and its subsidiary RoweCom. Moreover, the two purported plaintiff classes in Turner (former shareholders of eShare Communications Inc. and Delano Corp. who acquired shares of Divine when Divine acquired those companies) are purported sub-classes in Bobbitt. (Compare Bobbitt Consolidated Cmplt. ¶¶ 5(c), 9(b), 21-34; Turner Cmplt. ¶¶ 1-8.) Thus, these cases are related in

Springfield, Massachusetts, which may explain the delay in docketing that case in this District. See Exhibit A.)

several ways for purposes of LR 40.1, in that they (1) involve many of the same parties; (2) involve the same or similar claims or defenses; (3) involve the same transactions and events; and (4) involve substantially the same questions of fact and law.

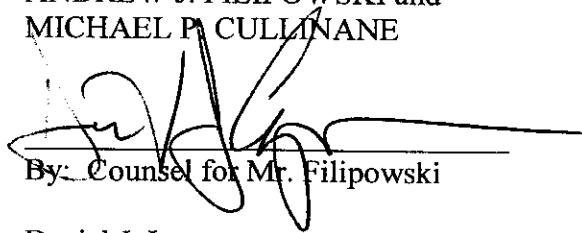
6. Section (I) of Local Rule 40.1 provides that: "In the interest of justice or to further the efficient performance of the business of the court, a judge may ... transfer the case to another judge, if the other judge consents to the transfer." The transfer of Turner as a case related to Bobbitt would further the interest of justice and the efficient performance of the business of the court, as one court would thereby be the single source of rulings concerning the issues of these two similar and related cases, thus obviating inconsistent rulings and avoiding duplication of effort.

WHEREFORE, for all the foregoing reasons, defendants Andrew J. Filipowski and Michael P. Cullinane, with the consent of the remaining defendants in the Turner case, respectfully request that Turner v. Filipowski, et al., Civil Action No. 04-12294-NMG, be transferred, with Judge Saris' consent, to Judge Saris, who is presiding over a related and previously filed case, Bobbitt v. Filipowski, et al., Civil Action No. 04-12263-PBS.

December 27, 2004

Respectfully submitted,

ANDREW J. FILIPOWSKI and
MICHAEL P. CULLINANE



By: Counsel for Mr. Filipowski

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CERTIFICATE OF SERVICE

I, Daniel J. Lyne, hereby certify that I have this 4th day of January, 2005 served a copy of the foregoing Motion To Transfer Related Turner Case To Judge Saris Pursuant To Local Rule 40.1 by serving a copy of same, by first class mail, postage prepaid upon:

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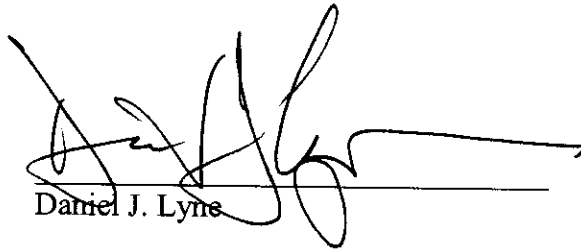
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DATED: January 4, 2005

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